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No. 87-1755

Supreme Court  
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# In the Supreme Court of the United States

OCTOBER TERM, 1988

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JOSEPH H. SOX, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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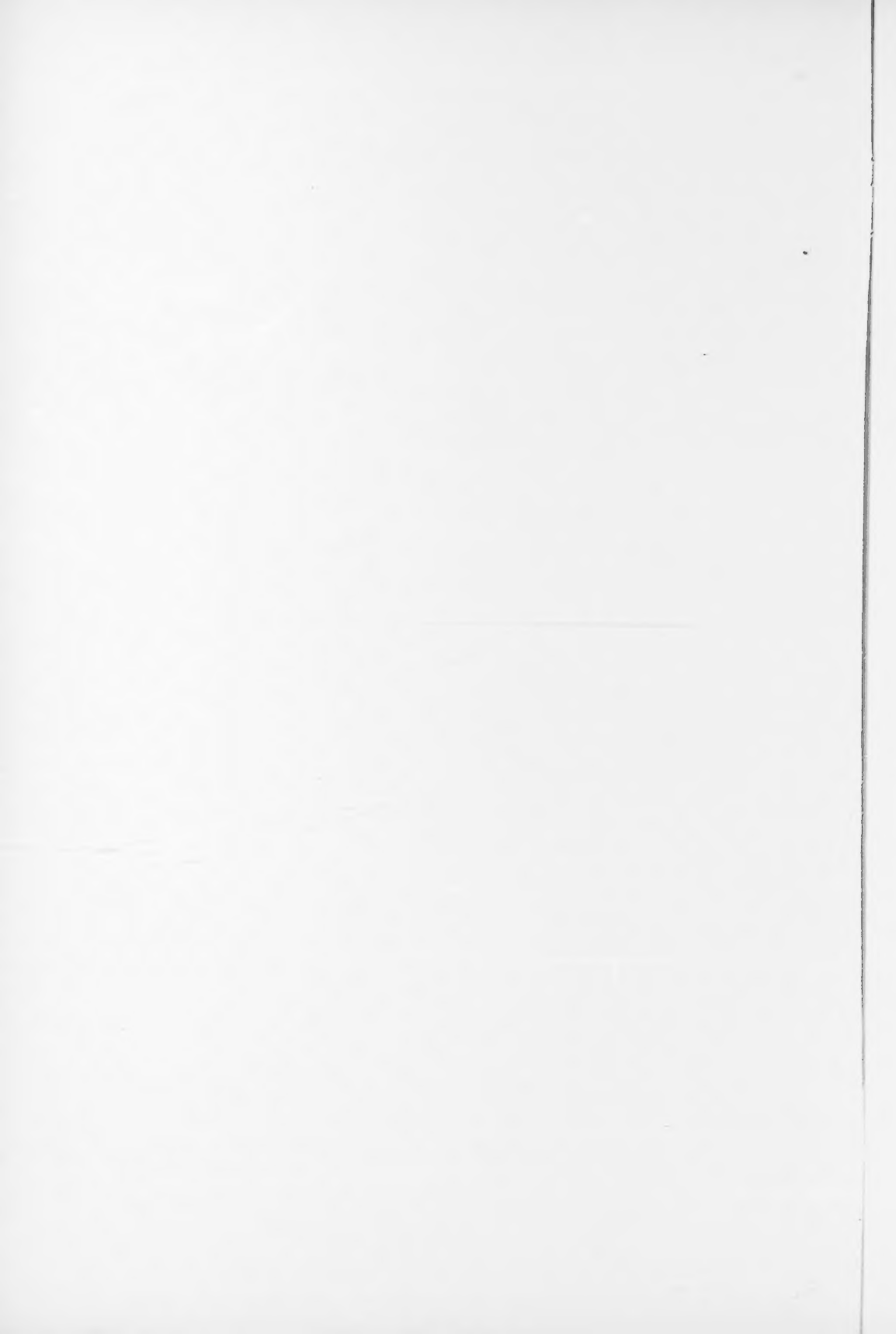
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### **QUESTION PRESENTED**

Whether exigent circumstances justified a warrantless entry into petitioner's home and garage to disarm booby traps in those locations.



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## **OPINIONS BELOW**

The judgment order of the court of appeals (Pet. App. A8) is unreported. The opinion of the district court (Pet. App. A1-A6) is likewise unreported.

## **JURISDICTION**

The judgment of the court of appeals was entered on December 9, 1987. A petition for rehearing was denied on February 24, 1988 (Pet. App. A9). The petition for a writ of certiorari was filed on April 25, 1988 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **STATEMENT**

Following a conditional plea of guilty, petitioner was convicted in the United States District Court for the Middle District of Alabama on one count of possessing an

unregistered firearm, in violation of 26 U.S.C. 5861(d). He was sentenced to a three-year term of imprisonment, which was suspended in favor of three years' probation, and he was fined \$5,000. The court of appeals affirmed in an unpublished judgment order (Pet. App. A8).

1. After suffering a series of burglaries on his property, petitioner installed a number of homemade weapons in his home, in his garage, and on the surrounding property. Those weapons were set up to discharge automatically when triggered. Pet. App. A2.

On November 29, 1986, petitioner was seriously injured on his property by a gunshot wound to the chest. His friend, Hugo Zacchini, took him to a nearby hospital. Anticipating that the local police would search his property for an armed assailant upon learning of his injury, petitioner instructed Zacchini to request that the police not enter his property, due to the presence of the booby traps on that property. Pet. App. A1-A2.

In response to a radio dispatcher's broadcast of a shooting at petitioner's home, officers of the local sheriff's office and police department arrived at the scene of the shooting. Based on what Zacchini had told the police, the first two officers to arrive at the scene concluded that only petitioner's home was booby trapped. Accordingly, in attempting to locate an armed assailant, they searched only on the grounds around the residence. While conducting the search, one of the officers became entangled in fishing wires that petitioner had placed across an area of his property. The officer, believing that he had stumbled across a booby trap, retreated to await the arrival of other officers. Pet. App. A2.

Zacchini and Chief Deputy Shaw, the officer in command that evening, arrived on the scene shortly after the first two officers. The officers informed Shaw about the



fishing wires in the yard, which they suspected were attached to a booby trap. Zacchini again warned the officers that petitioner's home, garage, and surrounding property were rigged with traps. Shaw decided to conduct his own brief investigation. As he approached petitioner's garage, he saw fishing wires that appeared to be connected to something inside the garage. On one of the outside walls of the garage, Shaw also observed what he thought was a booby trap aimed through a drilled opening. Pet. App. A2.

Based upon his own investigation, as well as the information provided by Zacchini and the two officers who first arrived at the scene, Shaw determined that an emergency situation existed and that the booby traps on petitioner's property had to be located and deactivated at once. Shaw believed that there was a strong possibility that petitioner had been shot by one of his own traps. Shaw was concerned that anyone innocently on the property might be injured or killed. And since a number of burglaries had occurred at petitioner's residence, he was also concerned that someone unlawfully entering the property might be injured or killed if the weapons were not deactivated. Pet. App. A2-A3.

Shaw sent an officer to the hospital to obtain information from petitioner about the location of the booby traps. He then entered petitioner's closed garage for the purpose of deactivating the weapons that he believed were inside the garage. Once inside, Shaw discovered more weapons than he had initially suspected; the weapons were complicated and varied in construction, and one had recently discharged. Shaw concluded that the expert assistance of the Explosive Ordnance Disposal Unit (EOD), located at a nearby military base, would be required to deactivate the

booby traps. Shaw also radioed for a paramedic team in the event an accident occurred. Pet. App. A3.

Members of the EOD arrived, conducted a thorough search of petitioner's property, and deactivated the booby traps. Immediately after the EOD deactivated the traps, county police officers photographed them and removed them from petitioner's property. Pet. App. A3.

2. After being indicted on 15 felony counts related to his possession of the booby traps, petitioner filed a motion to suppress the traps. He contended that the police and weapons experts violated the Fourth Amendment by entering his property without a warrant to deactivate and seize the weapons. The district court denied petitioner's suppression motion. The court premised its decision on the proposition that "exigent circumstances \* \* \* justify a warrantless entry where there is a need to 'preserve life or avoid serious injury' " (Pet. App. A4 (quoting *Mincey v. Arizona*, 437 U.S. 385, 392 (1978))). The warrantless entry was justified in petitioner's case, the court found, because "it was reasonable for the police officers to conclude that the booby-traps in [petitioner's] home, garage and surrounding property posed an imminent, life threatening danger to the public" (Pet. App. A5). The court further stated that it would have been "[u]nconscionable" for the police "to have done otherwise—that is, to have walked away from the house, leaving behind booby-traps which they knew could seriously injure and even kill any unsuspecting persons" (*ibid.*). The court of appeals affirmed in an unpublished order (Pet. App. A8).

#### ARGUMENT

Petitioner contends (Pet. 7-12) that the district court erred by concluding that exigent circumstances justified a

warrantless entry onto his property to disarm a series of booby traps. In fact, however, the district court's decision is a straightforward application of the "exigent circumstances" doctrine. Review by this Court is therefore not warranted.

1. This Court has long "recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant." *Michigan v. Tyler*, 436 U.S. 499, 509 (1978). In *Tyler*, the Court upheld the warrantless entry by firefighters into a burning building, as well as their subsequent seizure of evidence of suspected arson once they were lawfully on the premises. The Court concluded (*ibid.*) that "[a] burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.'" As the Court explained, "it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze. And once in a building for this purpose, firefighters may seize evidence of arson that is in plain view."

In the present case, it was likewise entirely reasonable for the police to disarm the numerous booby traps scattered about petitioner's property. The police were legitimately on petitioner's premises to investigate the cause of a serious gunshot wound to petitioner. One of the first officers to arrive, unaware that petitioner had rigged firearms outside his house, risked his life when he accidentally tripped over booby trap wires that petitioner had placed on the surrounding land. A second officer, who arrived moments later, discovered from a cursory investigation that petitioner may well have been injured by one of his own traps, leading the officer to suspect that the traps could fire even without being triggered. Under those cir-

cumstances, the police were clearly entitled to disarm petitioner's booby traps, without delay, to avoid endangering themselves (or others who may have been on the premises) while they completed their investigation into petitioner's shooting. And, having entered petitioner's house and garage for that purpose, the police likewise were entitled to seize petitioner's homemade weapons, which were evidence of a crime in plain view. See *Michigan v. Tyler*, 436 U.S. at 509.

Petitioner argues that *Tyler* is distinguishable because the police "could have remained outside [his house and garage] for days and no further injury \* \* \* would have been sustained" (Pet. 10). The police, however, were under no duty to suspend their investigation into the cause of petitioner's shooting. Nor would it have been appropriate to suspend their investigation in view of the very real threat that one or more of the weapons might have fired without being triggered, as well as the possibility that an intruder or passer-by would be injured by one of the weapons before they could be disarmed.

2. Contrary to petitioner's contention (Pet. 11-12), the decision below does not conflict with *United States v. Martin*, 562 F.2d 673 (D.C. Cir. 1977). In *Martin*, agents of the Bureau of Alcohol, Tobacco, and Firearms opened a suitcase at a Greyhound Bus terminal without first obtaining a warrant because they believed that they would find a machine gun in the suitcase. In reversing the defendant's firearms convictions, the court of appeals held that "the agents \* \* \* had ample opportunity to secure a warrant \* \* \*. Four agents were present in the Greyhound terminal \* \* \* [and] one of [them] could clearly have gone to get a warrant, while the other three maintained the surveillance of the baggage area" (*id.* at 677). The booby traps involved in this case posed a more immediate threat

to the public than the machine gun thought to be concealed in the unaccompanied suitcase. The police could not simply stand by to await the issuance of a search warrant, thereby postponing their investigation of petitioner's shooting and running the risk that a booby trapped weapon would fire spontaneously (or be set off by a squirrel or other animal). Nor could they depart from the scene altogether while awaiting a warrant, thereby risking the possibility that someone on the premises might stumble upon a booby trapped weapon. Accordingly, the decision in this case does not conflict with the decision in *Martin*.

#### CONCLUSION

The petition for a writ of certiorari should be denied.  
Respectfully submitted.

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